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OBSERVATIONS ON THE SHILLUK OF THE UPPER NILE

THE LAWS OF HOMICIDE AND THE LEGAL FUNCTIONS OF THE *RETH*

P. P. HOWELL

INTRODUCTION

PUBLISHED literature on the subject of the Shilluk is considerable[1] and there are also many interesting accounts of specific subjects buried in the files of the Administration. Nowhere, however, is there a complete account of all aspects of Shilluk life. Moreover, there has been a tendency to concentrate on certain aspects, notably the Divine Kingship, to the exclusion of others. In 1941 Mr. M. E. C. Pumphrey and I published two articles: the first a general summary account of the Shilluk tribe based on Mr. Pumphrey's observations and wide experience; the second a more detailed analysis of one Shilluk settlement,[2] the result of fieldwork carried out in 1937. In 1944 I had the privilege of attending the installation of *reth* Anei Kur and, together with Mr. W. P. G. Thomson, published a full account.[3] Subsequently Mr. Thomson published his 'Further Notes on the Death of a Shilluk Reth',[4] after the death of *reth* Anei in 1945. This, with Professor Evans-Pritchard's Frazer Lecture, *The Divine Kingship of the Shilluk of the Nilotic Sudan*,[5] represents the total of information published on the subject of the Shilluk in recent years.

The Shilluk are an exceptionally conservative people and, perhaps the legacy of centuries of resistance to external aggression, have a natural distaste for innovation. Yet times are changing and it is therefore all the more important that the gaps in our knowledge of Shilluk society as it was during the last few decades, and is now, should be filled. During the last two years I have had occasional opportunities to visit the Shilluk and to continue fieldwork, begun in 1937. The results of these investigations,

[1] See Bibliography, pp. 118–19.

[2] Pumphrey, M. E. C., 'The Shilluk Tribe', and Howell, P. P., 'The Shilluk Settlement', *S.N.R.*, vol. xxiv, 1941.

[3] 'The Death of a Reth of the Shilluk and the Installation of his Successor.' By Howell, P. P., and Thomson, W. P. G., ibid., vol. xxvii, 1946.

[4] Ibid., vol. xxix, part ii, 1948.

[5] Evans-Pritchard, E. E., Frazer Lecture 1948 Cambridge University Press, 1948.

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which largely concern social structure and kinship systems, are to be published later. In this article I have attempted to set down the evidence, often conflicting, concerning the secular and legal functions of the *reth* or king and, since these are relevant, the Shilluk laws of homicide. Professor Evans-Pritchard points out 'if we are to understand the place of the kingship in Shilluk society we must, I think, beware of attempts to define it in terms of judicial and administrative functions and view it rather as a ritual office and in a wider political context'.[1] There are in fact two opposing views. On the one hand are those who consider that the *reth* was the head of a highly-organized administration with a hierarchy of appointed chiefs; that he had absolute powers of adjudication and execution; that he exacted tribute from his people; that he imposed fines upon them for offences against the State. On the other hand are those who hold the opinion that the *reth* had no extensive secular functions of a political or administrative nature, but only a supreme ritual function to perform as the central symbol of the moral and natural order. That the political homogeneity of the Shilluk and the national characteristics of their political structure are maintained by the institution of the *reth* is not to be denied. An analysis of Shilluk political structure, of the segments themselves and of their latent opposition, reveals many forms which closely resemble similar segments in Nuer and Dinka society. The existence of the *reth* gives meaning and co-ordination to the segments of Shilluk society which would otherwise lack political cohesion. But how far are we justified in assuming that the *reth* was an autocratic ruler who intervened in everyday affairs and imposed his authority on his people?

Characteristics of Shilluk Society

The Shilluk are a Nilotic tribe who occupy a narrow strip of country mainly along the west bank of the Nile from Tonga to approximately Lat. 11° N. They are clearly of the same basic stock as the Nuer and Dinka, but have closer affinities with the peoples classified as Shilluk-speaking, i.e. the Anuak, who live along the Baro and Pibor rivers on the frontier of the Sudan and Ethiopia, the Acholi, Lango, Alur, Jopadola, Jaluo,[2] who live as far south as the north-eastern shores of Lake Victoria, and small groups living in the area of the upper waters of the Bahr el Ghazal. Their mythology suggests a common origin and their language is closely allied.

According to tradition the Shilluk migrated from the south through the Bahr el Ghazal into their present country under the leadership of Nyikang, their culture hero and the founder of the present dynasty of Shilluk kings. They conquered and subsequently mixed with the original inhabitants (about whom we know little except that they were probably not a Nilotic people) and extended their territory by raids and infiltration considerably farther north than their present boundaries. Tradition, supported by tribes other than the Shilluk and by Arab tribes living farther north, indicates that Shilluk country once extended as far north as Khartoum.

The Shilluk are now a sedentary people and have nothing approaching the large-scale dry-season migration of the Dinka and Nuer in search of green pasture. Their permanent villages, built on the high ground close to the Nile, are occupied all the

[1] Evans-Pritchard, op. cit., p. 13.

[2] See, for example, Driberg, *The Lango*; Northcote, 'The Nilotic Kavirondo', *J.R.A.I.*, 1907; Evans-Pritchard, 'Luo Tribes and clans', *Rhodes-Livingstone Journal*, no. vii.

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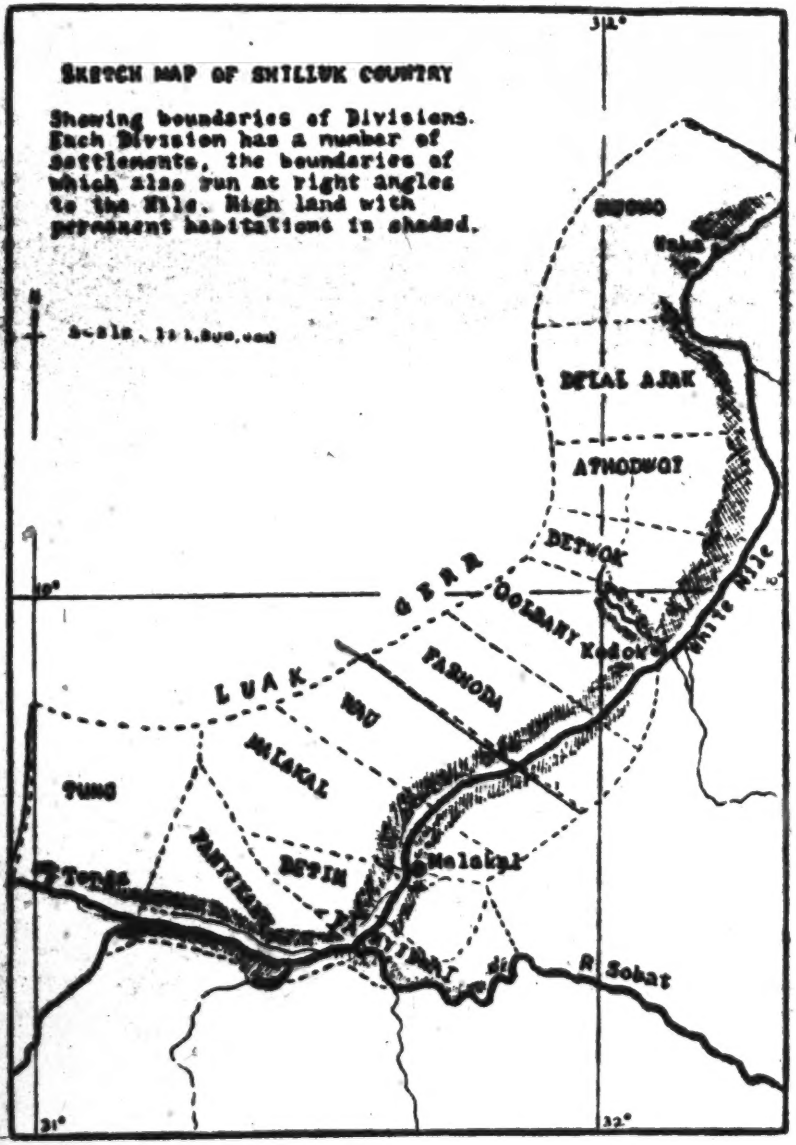

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year round and only the youths go to the cattle camps in the riverain pastures, which are never more than a few miles from their villages. The Shilluk are not a pastoral people in the sense that the Nuer and Dinka are, and rely to a much greater extent on agricultural products and on fish, for they are skilled and experienced fishermen. Since their migration to their present territory, it is probable that they have never had a very large cattle population, for their riverain pasture is not extensive.[1]

Shilluk clans[2] are not territorial in basis for they are highly segmented and widely distributed throughout the settlements of Shilluk country; as corporate units they have no real significance except at times of national festivals, and then only in the sphere of ritual and ceremony.

The Shilluk are divided into four main classes or groups of clans:

(i) The *kwareth*: the royal house, who trace descent from Nyikang and from whom the *reth* of the Shilluk is chosen.

(ii) The *orero*: a disinherited branch of the royal house who do not differ from commoners except in the special functions they perform at the installation of the *reth*, during his lifetime, and at his death. They are a distinct exogamous clan, though they may intermarry with the *kwareth* despite common ancestry.

(iii) The *collo*: the name refers collectively to the main body of the Shilluk clans of which a large number trace descent patrilineally from (*a*) the original followers of Nyikang, (*b*) individuals of other tribes who have migrated and settled in Shilluk country from early times onwards, and (*c*) ancestors who are lost in antiquity, but who may have occupied Shilluk country before the arrival of Nyikang.

(iv) The *bang reth*: the personal attendants of the *reth*, his wives or wives of past *reths*; the descendants of royal slaves obtained by capture; those who volunteer to serve him by reason of their possession by the spirit of Nyikang,[3] and paupers who volunteer for this form of service in order to exist at all. Finally, there are the alleged descendants of those who were enslaved because their close kinsmen committed homicide, though this statement must be examined more critically later.

There are no real caste distinctions between *kwareth*, *orero*, *collo*, and *bang reth* and, apart from restrictions on the marriages of daughters of a living or past *reth*, they intermarry freely. The *kwareth*, however, by reason of their connexion with Nyikang and subsequent *reths*, are treated with special respect and this extends to those *bang reth* who have close association with the shrines of Nyikang or of dead kings. The Shilluk basic social structure is very similar to that of the Nuer and Dinka, though there are important differences. The segmentation of the population into territorial units and of the clans into localized lineages has, however, a greater permanency and stability. The distinctive feature of the Shilluk political structure is the existence of an established and theoretically omnipotent monarchy and it is in the political sphere

[1] An accurate census taken during the veterinary campaign against trypanosomiasis gives a figure of 23,000. This was after a very severe epidemic in 1946 and it may be assumed that they had lost at least 30 per cent. of their stock. A human census, accurate at any rate within 15 per cent., gives a population figure of 110,000. The ratio of human population to cattle population is therefore between 1:0·5 and 1:0·23. Cf. Nuer where highest ratio given is 1:2·3 and the lowest 1:1·2.

[2] *Kwo*: Literally 'descendants of', prefixing the name of the clan. '*kwo* Okelo'—the descendants of Okelo—and so on.

[3] Often now attendants at the many shrines of Nyikang.

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that the most definite contrasts may be found. Whether this established and institutionalised monarchy is the result of diffusion from elsewhere, a legacy from ancient Egypt,[1] or the result of spontaneous development from the politico-religious functionaries who exist in embryo form among other Shilluk-speaking[2] and, indeed, other Nilotic peoples, is a controversial subject which I do not propose to discuss here.

Territorially, Shilluk country is divided into two provinces, within which are the northern and southern provinces of Muomo and Tung, eleven divisions, and finally each division into a number of settlements which are referred to as *padh*.[3] The settlement is the largest political unit which has a permanent and stable function in Shilluk society today.[4] The members occupy a common and clearly defined territory, have a common grazing and fishing area held collectively, a common name, and a common system of age-set nomenclature.[5] Within each settlement are a number of villages or hamlets, each of which, with its offshoots, is occupied by a distinct kinship group, the local lineage of one of the main Shilluk clans. One of these lineages is usually dominant and, though it does not give its name to the settlement, its leader is generally recognized as holding some authority over the rest of the community. In each settlement there are also usually representative lineages of *kwareth* who sometimes, but not always, have assumed a position of dominance within that settlement, usually by force of numbers. There are also *bang reth* living in close association with *kwareth* or tending one or more of the numerous royal shrines.[6]

There are frequent movements and migrations, both of individuals and of small domestic groups. The persons who thus take up residence in other parts of the country retain links with kinsmen in their original home and these links continue for a period. The number of generations which pass before they are forgotten is indeterminate and variable, but the factor of territorial association is an important one. Lineages of one clan living in one area are likely to retain these links and remain bound by rules of exogamy however far removed they may be in the kinship structure. Moreover, common residence in one village area or even one settlement may create bonds which are equal in strength to kinship ties and may even carry with it a bar to intermarriage. In such circumstances there is usually the fiction of common descent through the female line. Among the Shilluk there is a bar to marriage with close relatives on the maternal side carried to three or four generations, but common residence sometimes creates a more permanent prohibition.

[1] See Seligman, C. G., *Egypt and Negro Africa*. George Routledge & Sons, 1934, p. 60.

[2] For example, the Anuak nobles; see Evans-Pritchard, *The Political System of the Anuak of the Anglo-Egyptian Sudan*, Monographs on Social Anthropology, London School of Economics. 1940; and Driberg, J. H., *The Lango*.

[3] *padh*. A more elastic and relative term than I had realised when writing an article on this subject in 1937. *padh* simply means 'home' or 'homeland' and Shilluk refer to *padh collo*: 'Shillukland'. The word itself has the same relativity as the Nuer word *ciang* and the Dinka word *wut*.

[4] There have, of course, been changes of boundaries and processes of fission and fusion characteristic of any segmentary society. The nature of the terrain in Shilluk country, however, precludes any great change. The limitations of high ground, with clear-cut watercourses as boundaries, together with associated economic interests, tend to stabilize communities.

[5] This is a significant fact and one which throws much light on the true nature of the Shilluk *padh*. When we compare other Nilotic tribes we find that age-set nomenclature is common to whole tribes, but does not extend beyond tribal boundaries (Nuer) or, like the Shilluk, is limited to smaller segments of society (Ngork Dinka).

[6] Lineages of the *kwareth* are referred to by the name of the *reth*, *nyireth* (son of a *reth*), or *nyinyireth* (grandson of a *reth*) who founded them. Thus *kwareth* Fadiet, *kwanyoreth* Adung, &c. Similarly, *bang reth* are distinguished as *bang reth* Fadiet, *bang nyireth* Adung, &c.

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The all-powerful being who exists in the minds of the Shilluk as a remote and amoral deity is called Juok. The principal medium through whom Juok is approached is Nyikang, but the distinction between them is not well defined. 'Nyikang is Juok but Juok is not Nyikang'[1] for Nyikang is also a mythological figure who takes his place in Shilluk history as the culture-hero of the Shilluk people,[2] the founder of the royal house; as the soul of Nyikang is reincarnate in every Shilluk *reth*, he thus exists both in the past and in the present. Nyikang is the *reth*: the *reth* is Nyikang. This paradox of the unity yet separation of the three is not easy to define and the Shilluk would find it difficult to explain. Juok, Nyikang, and the ruling *reth* represent the line through which divinity runs, a conception which is similar to the ancestor cult, but the cult is associated with the tribe as a whole rather than with the royal clan (*kwareth*) or any other more restricted kinship group. The *reth* is himself the medium through whom both Nyikang and, more vaguely, Juok are approached and is the human intercessor for mankind with God. Voluntarily by ritual acts, involuntarily by reason of his very existence, the *reth* affects the fortunes and fertility of the tribe and controls the natural phenomena which react upon crops and cattle. The *reth* is therefore the central figure of tribal religion as well as the symbol of political unity. He is responsible for the welfare and fortunes of the people both spiritually, as the present manifestation of Nyikang, and temporally, but less clearly, as the leading tribal authority. 'The Shilluk would not seriously dispute the *reth*'s divine attributes (unless a follower of some alien religion),[3] though some might resist his more mundane powers.'[4]

The Problem of Authority

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The extent of the *reth*'s authority is naturally of considerable importance to an analysis of Shilluk law and legal procedures, especially in the past, and an answer must be attempted even though the evidence is scanty and it is now probably too late to obtain more. The first factor of great importance in this discussion is historical, for the Shilluk have not been entirely free of alien government since 1867 and external influences prior to that date, so that, whatever the political authority of the *reth* may have been previously, since then it has been influenced by external forces. Moreover, not only the present Government, but also the Turco-Egyptian administration, appear to have attempted a rudimentary form of what in Africa has been called 'Indirect Rule', through the agency of the *reth*. However unsuccessful this may have been, it must have increased the powers of the *reth* to some extent and given to him an authority which in the past he may well not have possessed. This argument is not, I think, affected by the fact that so many *reths* suffered sudden death or exile at the hands of their own people or the Turks; but it is significant that during the Turkish régime the position of the *reth* was nearly always insecure. He was at any time liable to be ambushed and killed by an ambitious *nyireth*[5] who hoped to gain the support of the Shilluk people and supplant him as reigning monarch. This potential opposition

[1] Howell and Thomson, op. cit., p. 8.

[2] The meaning of Nyikang in Shilluk society will not be discussed here in detail. There is considerable literature on the subject which is listed in the Bibliography.

[3] The Dinka cult of Deng has sometimes found favour with certain Shilluk individuals and as such is subversive of the status of the *reth*, though it has never provided a serious threat.

[4] Howell and Thomson, op. cit., p. 9.

[5] Son of a *reth* who has reigned and therefore a claimant to the throne. See Howell and Thomson, op. cit., p. 11, and Evans-Pritchard, op. cit., pp. 33–34.

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is in accordance with Shilluk tradition, but the kings prior to this period appear to have had a stability of tenure unknown during the latter half of the nineteenth century.[1] The opposition sprang from resentment of an excessive and often oppressive use of the powers accorded to him and also from a reaction to the interference of an alien government, for many of the *reths* of that period were no more than puppets.

reth Kwathker, who was the *reth* of the Shilluk at the time of the first arrival of the Turkish 'Mudir' at Fashoda, was deposed and replaced by a nominee called Ajang Nyidhok, who was never accepted by the southern Shilluk.[2] A civil war between the north and the Government on one side supporting Ajang, and the south supporting Kwathker followed. The south was defeated, and Kwathker died in chains at Fashoda.[3] Ajang was himself deposed shortly afterwards and the Turks attempted to administer the Shilluk without a *reth* at all. This policy was, however, entirely unsuccessful and, after a clash which resulted in a massacre of Government troops at Kaka in 1875, Kweikon, son of Kwathker, was installed as *reth*. A few years later Kweikon joined the Turkish troops in their attack on the forces of the Mahdi at Jebel Gadir. The Turkish and Shilluk forces were annihilated and Kweikon was killed. Subsequently, after a period of interregnum, Yor, son of *reth* Akoc, who had visited the Mahdi and received his support, installed himself at Fashoda. The support of the *Mahdia*, however, did not continue under the régime of the Khalifa Abdullahi, and Yor was finally captured and beheaded by the Emir Zeki Tumal near Tonga. His successor was Kur, another son of *reth* Nyidhok, who was a Mahdist puppet and called by them Abdel Fadil. During Kur's absence in Omdurman, Akol, a son of Kwathker, supported by the southern Shilluk attempted a *coup d'état*, but was unsuccessful owing to the intervention of the northern Shilluk. The present Government arrived in 1898, and Kur remained in power until 1903, when he was deposed for 'unjust and oppressive' actions against his people. He was replaced by Fadiet, a Government nominee, who died in 1917. After a show of opposition by the southern Shilluk, who supported Coti, son of *reth* Ajang, Fafiti, son of Yor, was finally installed at Fashoda in 1917 and ruled until 1943. He was followed in quick succession by Anei wad Kur, who died less than two years after his installation, and Dak wad Fadiet, who died in 1951. The present *reth*-elect, not yet formally installed, is Kur wad Fafiti.

Throughout this period, administration was carried out through the agency of the *reth*, although there were frequent attempts to increase the authority of local chiefs, formed into Chiefs' Courts. It may be noted also that there were occasional attempts to oust Fafiti in favour of rivals, the most notable of whom was Nyawelo wad Kur who was exiled in 1932. These attempts were, however, severely suppressed by the Government and it is impossible even to guess whether they would have been successful, if the reigning *reth* had not enjoyed an artificial stability of tenure provided by the Government. During this period the policy of the Government was to establish tribunals throughout the country from which final appeal lay to the *reth* himself. The extent of the jurisdiction of these tribunals has varied considerably from time to time, the boundaries being altered, for administrative convenience, to approximate to the

[1] See Hofmayr, *Die Schilluk*, 1925, and also Westermann, *The Shilluk People*, 1912, on traditions about the early *reths*.

[2] Howell and Thomson, op. cit., p. 75, i.e. those living in Lusk. The division into Lusk and Gerr has had not only ritual but political significance.

[3] Kodok—Turkish Province Headquarters and called by them Fashoda. Fashoda is in fact the capital of the *reth* and lies some fifteen miles south of Kodok.

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traditional divisions of Shilluk country. From the early years of administration, with frequent minor adjustments, until 1949 these divisions were eleven in number,[1] but they were recently amalgamated to form five.

These historical factors have been summarized here to show how difficult it is to formulate definite conclusions on the *reth*'s political authority. According to tradition and to what the Shilluk will often themselves say, he has absolute powers of intervention to suppress public disturbances, to give judgement in certain disputes and, moreover, to execute those judgements. In fact, in recent years, and possibly at times during the latter half of the nineteenth century, this theoretical authority has had the backing of an alien government and may for this reason have been exaggerated beyond what was actually enforceable in earlier times. There is, therefore, throughout Shilluk history in the last hundred years a divergence of theory and fact, and one does not know how much of the theory has been created by external influences. It will be realized that this problem is also of some importance in a theoretical study of primitive legal systems, for we wish to know whether the laws were, in fact, enforceable, whether the Shilluk monarchy, apart from external influences, represents 'politically organized society', and whether certain laws were enforced and legal sanctions applied in such a manner as to justify the use of the term 'public law'.

There is little evidence of legal procedures during the Turkish régime and none during the *Mahdia*. Schweinfurth writing, in 1868, a lucid account of a Shilluk dispute heard by the Turkish 'Mudir' or Governor at Fashoda, says: 'He (the Mudir) was continually being called upon to adjust the disputes of natives, who appealed to his judgement even in their most private concerns. . . .' After describing the unsuccessful plea of a Shilluk girl for permission to marry her lover who had not enough cattle to pay the bridewealth, he adds, 'This was not a very comforting decision, but it showed me plainly how that it was ever his rule to recognize the customs of the country'.[2] Schweinfurth also gives a vivid picture of the Shilluk king at this period.

> In the Mudir's verandah I also made acquaintance with a Shillook chief, who had entirely surrendered to the Egyptian Government, and was now, as the Governor expressed himself, 'coming to his senses.' There was no external indication whatever of his rank. . . . He retained now but a shadow of his former power; his better days were gone, days in which, attended by a council of ancestral state, he had swayed the sceptre of patriarchal dignity. Of all the negro races which occupy the entire district of the Nile, the Shillooks used to uphold the most perfectly regulated government. . . . But now this condition is all changed, and everything has disappeared which gave this independent and primitive people their most striking characteristics.[3]

There are, of course, other references to the indigenous administration of the Shilluk based on the division of the country into provinces and settlements with a representative of the *reth* in charge of each, and the *reth* himself as the ultimate authority. Many writers therefore assume that there existed a highly organized system; more highly organized than the evidence warrants. It is natural that the present

[1] See Howell and Thomson, op. cit., p. 6.

[2] Schweinfurth, G., *The Heart of Africa*, London, 1878.

[3] Schweinfurth, op. cit., p. 19. He is here referring to the Turkish puppet Ajang wad Nyidhok. He mentions later that 'Kasgar' (presumably Kwathker), another descendant of the ancient reigning family, still maintained himself as an 'uncontrolled sovereign' in the southern part of the Shilluk country.

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Government, with periodic modifications, has utilized existing divisions of the country as administrative units, and has drawn its agents from the dominant lineages of each, thus creating a hierarchy of chiefs responsible to the *reth* himself; but this is not necessarily evidence that such a system was a reality in the past. On this subject Pumphrey expresses the opinion that, 'The power of the *Reths* before the Turkish interference was undoubtedly great. It was based partly on the semi-divinity with which tribal tradition clothes them and partly upon their great wealth in cattle and slaves. Justice was probably rough and large-scale fighting more prevalent than litigation, such law-suits as there were being seen, as previously mentioned, either by the settlement chief or by the *Reth* at Fashoda.' He adds in a footnote that 'The *Reth* is said to have had the enviable privilege of killing a tiresome litigant with a club.'[1] In an unpublished record Pumphrey goes farther than this and says:

I do not think it is true to say that as far back as Shilluk tradition goes, there is a system of administration and Courts with the *reth* at the head of it and powers descending through the heads of provinces, whom we call Court Chiefs, to heads of sections down to the village headman. . . . Naturally as one Chief or another attained to local prestige, he would tend to attract cases to him, and certainly for a period the princesses of Dettim used to see local cases. There were, however, only four regular offices under the *reth*. The Chiefs of Luak and Gerr lived on either side of Fashoda and were his right-hand men. The Chiefs of Muomo and Tonga were chiefs of the marches whose definite job it was to keep a look out for invading enemies. Apart from this, however, the Chiefs of the marches were also the *reth*'s representatives in the two extremes of the country and used both to see cases themselves and send along to Fashoda those cases which they thought the *reth* should see. Beneath these four officials were the Chiefs (*jyak*) i.e. holders of the *lau*.[2] Our present 'Section Chiefs' are only *some* of them *lau* holders, for the reason that 'sections' (occasionally somewhat arbitrarily formed) contain usually several original villages and each village has a *lau* (by an 'original village' I mean the parent village of a group of off-shoots of villages). It was through these *jyak* and through these four senior officials that the Shilluk country used to be ruled. The *reth* did not tour much, but had the people sent to him at Fashoda. If a killing occurred, the offending lineage would have to produce a girl and a boy. The girl would be handed to the brother (or near relative) of the dead man and the boy would go to be slave to the *reth*. If the case was not settled, or if one village went to fight with another one without sufficient cause, the *reth* would send his army (*tich*) to take all the cattle from the offending village, or, if necessary burn their villages. This army would consist of one or more of the adjacent villages, its strength depending on the amount of potential resistance. Any number of sections could be raised and it seems that the sections so instructed were glad to go, since the *reth*'s army was seldom, if ever, opposed and consequently there was little bloodshed, but a certain amount of booty.[3]

Pumphrey's opinions may seem somewhat contradictory, but it is clear that he thinks there was no highly efficient State system with an all-powerful *reth* at the head.

Evans-Pritchard points out that:

it is unlikely that the so-called 'provinces' were in fact more than districts or that they were in any sense administrative departments before they were made into something of the kind by foreign governments. Moreover, though doubtless the king exercised considerable influence in the country and may have confirmed-settlement chiefs in office, he did not

[1] Pumphrey, op. cit., p. 19.
[2] *lau*, robe of office given by the *reth*.
[3] Pumphrey: Unpublished records. Undated: *circa* 1936.

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631 642 nominate them. They were heads of settlements in virtue of their position as heads of lineages dominant in those settlements and although they had certain duties to the king it is, I think, wrong to describe them as being in any sense administrative officials. To use such terms as 'state', 'government', and 'administration' in speaking of the Shilluk political system would appear to me, in the light of what is now known of it, to be a mistake.[1]

My own opinion is in accordance with these views. At any rate, if such terms are used, it should be made clear that they are qualified by the considerations already mentioned. In comparison with modern conceptions of an organized State system, or with such highly developed political institutions as are found in some African kingdoms, such as that of the Baganda, the Shilluk system cannot be said to have reached, without external influences, a high degree of rigidity or efficiency. When compared, however, with the acephalous systems of their Nuer and Dinka neighbours, it is apparent that the Shilluk had, even in early times, advanced much farther along the road towards 'politically organized society'.

Homicide and Blood-feuds: The *Reth*'s Rôle as Peacemaker

171 682 A study of the laws of homicide is likely to reveal, not only the nature of the legal system and whether or not a system of public law was in existence in the past, but also whether such law was in fact enforced by the *reth* or his representatives. In an acephalous society like that of the Nuer, and probably among the Dinka as well, we know that homicide was, until the advent of the present Government, treated purely as a private delict subject to retaliatory or restitutive sanctions. Thus an act of homicide would instantly lead to a blood-feud between the two segments of society concerned. A feud could be composed either by retaliation against the person of the killer or one of his kinsmen—which might lead to yet further hostilities—or by payment of an indemnity in cattle equivalent to the life of a man, to restore the equilibrium. We know too that a special functionary existed, the *kwar kwac* or 'leopard-skin chief' of the Nuer and the *bany de ring* or 'Chief of the Spear' of the Dinka. These experts were invited by the participants to intervene and mediate between them and to supervise both the secular and ritual processes of composition and peacemaking according to accepted and conventional patterns. In no sense did they have the authority to impose their demands for peace on the people or forcefully to intervene between them. They were called upon to do so only when the will to come to terms was already there, largely determined by expediency.

We know that among the Shilluk acts of homicide were followed by feuds, often more bloody and lasting than any likely to occur among the Dinka and Nuer. We know too that blood-feuds could be composed by the payment of compensation and the performance of the ritual which accompanies such payments. But here there is a difference. While in Dinka and Nuer society there were many recognized hereditary mediators, among the Shilluk there was only one, the *reth* himself. The functions of the *reth* in the processes of peacemaking are therefore relevant. Was he, like the *kwar kwac* and the *bany de ring*, simply a mediator and ritual expert competent to conduct the negotiations only on the demand of the people themselves, or was he able to intervene between them with an independent and neutral force behind him? In collecting the accepted indemnity, did he hand it over to the injured party as compensa-

[1] Evans-Pritchard, op. cit., p. 14.

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tion, from which he may have deducted recognized fees for his services in the same way as the Nuer and Dinka functionaries did, or did he appropriate the cattle to himself as head of the State? Was homicide a crime against society of which the *reth* was the central representative, or was it merely a private delict? These questions are relevant and fundamental to the whole problem of the nature of Shilluk law and the position of the monarchy.

As among other Nilotic people, we are faced with the difficulty of finding out how homicide was composed before the advent of the present Government. Among the Shilluk it would really be necessary to have information dating back to a period before the advent of the Turkish régime in 1867. It is doubtful, of course, whether the Turks ever had sufficient control over the Shilluk to have any direct influence on their laws and legal procedures, but since they attempted to administer the country through the agency of the *reth*, at any rate during some periods of their administration, they doubtless influenced him in this particular connexion. Except for vague references to the existence of homicide, to internecine strife, and the warlike character of the Shilluk, I know of no precise mention of this subject in early literature.

Blood-feuds and inter-settlement fighting

Shilluk settlements have certain distinctive characteristics including the restriction of age-set names and the ritual of the age-grade system within the settlement. Although now fast disappearing, and no longer of great significance owing to the repressive policy of the Government, the primary function of the age-grade organization seems to have been military.[1] Hofmayr on this subject says:

> Every man is a soldier and literally always under 'arms'. Every Shilluk who has ceremonially danced, is a warrior as long as he is able to bear arms. They form groups. Every settlement is independent with its own *bany* (principal singer and president). Different settlements combine and sally forth under the leadership of the eldest *bany* against their powerful enemies.[2]

The *bany* or *beng*[3] is, within the settlement, the leader of organized hostilities, which have been frequent between Shilluk settlements. His function in this connexion is brought out again and again in official documents and the attitude of the Administration has throughout been hostile. We read, for example, in the records of the Shilluk Chiefs' Council that 'The *reth* is opposed to them all as a subversive influence, but there are evidently some Chiefs who are afraid of them. Young *bany* who give trouble shall be punished and turned out.'[4] Again, in 1947:

> A *bany*, or war-lord in Shilluk, is a social institution which has been forbidden for six years in Shilluk country, and the bar is well known. . . . The *bany* . . . is essentially a leader of the youth of a section, i.e. the warrior class. It is said that in the old days, when there was little public security and each section had to look after itself, the *bany* was a useful functionary, and in so far as he co-ordinated the warriors of a section this was doubtless so. Now, any 'class consciousness' on the part of the warriors must have an aggressive tendency as it can

[1] Howell, op. cit., p. 57.
[2] Hofmayr, op. cit.
[3] Cf. the Dinka word *bany* or 'expert'—though among the Shilluk the term is restricted to the age-set leader, whose duties are primarily military. See also Howell, op. cit., p. 60.
[4] Records of Shilluk Chiefs' Council meeting 1934 (unpublished).

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have no value in defence.[1] The *bany* is the symbol of this aggressive spirit. The *bany* himself is frequently an elderly man, and not a 'fire-brand' and his functions are passive. He is appointed, just like any other Chief, and when his people go to war he is carried as a mascot on a bed. He takes no active part and, like most Shilluk institutions of a seditious nature, the *bany*, like the *ajireth*, is powerless in himself and depends on public support.

On this occasion Nyigir settlement appointed a *bany* and the Chief failed to report the matter to the *reth*, or to the District Commissioner. A few days later Nyigir carried their *bany* into Golbainy, the neighbouring settlement to the north, and behaved in an aggressive manner, singing and carrying their shields. This challenging demonstration was reported in Fashoda settlement next day, though the royal capital was avoided. The *reth* himself, hearing singing of which he had not been notified personally, intervened between Nyigir, lined up on their border and carrying their *bany*, and Fashoda who were mobilizing to defend themselves . . . An old feud exists between Nyigir and Fashoda. In the time of *reth* Nyidhok (*circa* 1840) Nyigir attacked and burned the Royal Village of Fashoda. In 1917 Nyigir killed a Government policeman and assistance had to be obtained from Malakal and Tewfikia (where the mounted police had recently gone from Kodok). Nyigir is the largest Shilluk section, and has a strong element of intractable *kwareth*, all closely related and descendants of *reth* Awin, who, I know from experience, are hard to control. As far as I can judge this was not a seditious movement against the *reth* himself, but a major fight round Fashoda might have led to anything.[2]

I have quoted this incident, as it is recorded, not as evidence of subversive action against the person of the *reth*, or any threat to depose him, but because it is clear that the *reth* is concerned, even had the incident been farther removed than his own capital, in maintaining peaceful relations between the settlements. Further, the incident is typical of the hostilities which have so frequently occurred and been sustained for long periods. Referring to *reth* Fadiet's time (1903–17) Hofmayr says:

> There was a great fight between Owaci and Tworo. Banholzer relates: 'A man from Owaci had been bewitched in Tworo and was kept in a village. They asked him how many men had been killed in the last fighting, but he refused to answer. Thereupon he was murdered and his body thrown into the river and anchored by wooden pegs, but the body broke away and floated downstream. The people of Owaci got to hear of it and caused the great fight in which many Tworo people were killed. The survivors fled to the other bank of the river and until now the Tworo people say they are allowed to kill Owaci people as the price of blood.'[3]

This feud, referred to by Hofmayr in 1905, is of particular interest because there are accurate records of its continuance later. For example, between the years 1931 and 1932 there were thirteen incidents of clashes and several of homicide, and during this period twenty-seven men of Thworo and nineteen of Owaci were killed and larger numbers were wounded. The feud was finally settled in 1932 by a peace ceremony performed by the *reth* which will be described later.

These feuds, and in particular the feuds between Owaci and Thworo, have been mentioned because they show a persistence which does not seem characteristic of feuds among the Nuer and the Dinka, and also because casualties were very numerous.

[1] The meaning of this statement is not clear. If there is aggression there must presumably also be defence.

[2] Thomson, W. P. G., unpublished Government Records.

[3] Hofmayr, op. cit.

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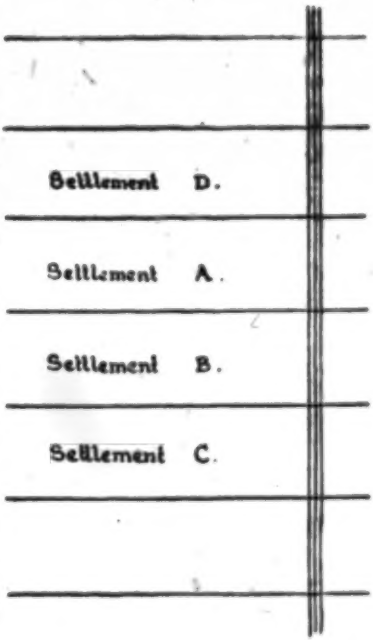
Other examples are recorded in the Shilluk District records.[1] Another important factor is the nature of Shilluk territorial organization. Settlements can, in a sense, actively continue a feud only with their immediate neighbours on either side. Thus, if a man of settlement *A* (see fig.) kills a man of settlement *B*, this may be the beginning of a feud which, though sometimes dormant, frequently breaks out again, because both sides are easily mobilized against each other; also it may lead to serious clashes in which the casualties may be considerable. At the same time, the sanctions for peaceful composition are comparatively greater. A feud between settlement *A* and settlement *C*, and even more between settlements *D* and *C*, is less easily sustained, though the sanctions for peaceful composition are comparatively less effective owing to territorial distance. Moreover, owing to kinship links which stretch across the boundaries of the settlements, there may be a tendency for intervening settlements to oppose further strife, or sometimes, on the other hand, to take sides in the affray, in which case internal warfare on a much wider scale may result. Demographic factors are here important and more easily discernible owing to the peculiar nature of Shilluk country and the way in which it is segmented in a continuous line from north to south, the boundaries being more or less at right angles to the Nile.



This form of sustained blood-feud between settlements in Shilluk society[2] is characteristic and endemic, and there are many instances both during the régime of the present Government and also during the previous Turkish administration, of which no official records are extant, but concerning which references may be found in the literature of early European travellers. Other forms of internal strife are either on a greater scale—widespread clashes often connected with subversive movements against the ruling *rith*—or minor hostilities within a settlement which concern the component lineages; from the evidence available, these appear to have been less prolonged than feuds between settlements. The first type of hostilities cannot really be

[1] The authorities were much exercised over the problem of feuds and homicide—at any rate up to 1933—and the incidence of homicide was until then very high indeed.

[2] I do not here attempt to correlate the Shilluk 'settlement' with similar segments in Nuer and Dinka society. If one called the four main provinces 'primary segments', the divisions (*lak*) would be 'secondary segments' and settlements would be 'tertiary segments' as described among the Nuer. The use of similar terms, however, presupposes a similarity of structure which does not exist, for segmentation among the Nuer is based on the analogy of a lineage, but this is not so among the Shilluk. Furthermore, can the Shilluk 'nation' (sometimes called tribe) be compared directly to a Nuer 'tribe'? Similar difficulties arise when we attempt to compare political or social units among the Dinka, although

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669 621 described as feuds, for they amount to civil war; the latter are usually so quickly composed that the feud is soon over. The ultimate aim of the first is successful deposition of the monarch by one side or his retention by the other, and there is evidence [631] of a traditional, almost institutionalized, opposition between the north and south.[1] In the latter form of hostilities the desire for peaceful composition after an outbreak of violence or an act of homicide was presumably fostered by expediency, for within so compact and densely populated a territorial unit the continuance of a feud would be intolerable.[2] Local lineages within a settlement are sufficiently united by common interests in economic activities, by marital ties, and above all in common defence against aggression from other settlements, that these sanctions were, and indeed still are, particularly effective. These distinctions are important, for not only are feuds [628 643] between adjacent settlements often fiercely sustained, as we have seen, but it is at this level of internal disruption that the intervention of the *reth* is most obvious, if we are to accept the evidence of recorded instances. This is true whether we take the view that in the past, before Government influences were effective, the king's intervention took the form of arbitration demanded by the participants, or whether we take the opposite view that he took repressive or even legal action as the head of an organized State.

In the case of civil war over the tenure of the monarchy itself, the *reth* was the leading participant defending his personal position against a rival. Action against him was *ultra vires*, though this was no longer true as soon as his rival was established on the throne. In the case of hostilities within a settlement, the sanctions were probably [626] sufficiently forceful to secure amicable composition without either external arbitration or repression. We must, therefore, consider homicide in the context of inter-settlement feuds in which, as we shall see, the *reth* was more particularly involved in the rôle of peacemaker. It will then be necessary to consider the more individual aspects of the laws of homicide.

The Reth's *Rôle in the Composition of Inter-settlement Feuds*

643 On this subject the Seligmans say:

682 692 As the fountain of justice, the king kept for himself by far the greater part of the fines for homicide and other grave offences. The fine for man-killing was usually ten head of cattle, but sometimes more was levied; a girl might be taken in lieu of the cattle, when the king would allow the girl to marry, but would keep the bridewealth; or a girl and a boy might be kept as hostages by the king until the cattle were paid. The king might give one head of cattle to the family of the deceased as compensation; this, however, did not always settle the matter, and a blood feud might start and be continued until the balance of dead was even, often not only families but whole villages becoming involved.[3]

the Ngok Dinka at any rate are in this respect closer to the Shilluk than to the Nuer.

[1] See Evans-Pritchard, *op. cit.*, p. 19.

[621] [2] Latent hostility between kinship groups *within* a settlement sometimes prevailed. I recently drove with the *jago* of Ogud *Par* from his home in the extreme south of that settlement to his northern boundaries. He insisted that I should drive him back, presumably because he preferred the comfort of a motor car to his own feet, but he gave as a reason that his people were at feud with the *Awe* Oman lineage lying just to the north of his own village (an act of homicide had occurred two years before). It may be noted, however, that the villages of these *Awe* Oman are set in Ogud *Awe* which is, in a sense, a separate settlement territorially but not politically within the boundaries of Ogud *Par*. It is doubtful whether a feud between these people would be long sustained.

[3] *Pagan Tribes of the Nilotic Sudan*, p. 46. The authors make no reference to the evidence from which these deductions were made. It must be remembered that Seligman supported the view that the king had absolute power. 'In the old days his word was law....' *The Cult of Nyakang and the Divine Kings of the Shilluk*, Wellcome Report, 1911.

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There are also scattered references by Hofmayr, who writes: 643

When the number of dead and wounded is equal on both sides, they stop fighting; then the king will hold a Court and punish the party who is in the wrong. . . . In the case of mortal wounds, the penalty is an ox. In the case of deaths, ten head of cattle have to be paid and formerly a maiden instead of the cattle. This heavy fine is paid to the king who in return would give two or three oxen to the family of the deceased for the mourning dance. 642 682

Later, talking of the reign of *reth* Kur, he says:

Two villages, Bol and Pabur, were fighting over a beautiful maiden. There was much blood shed on both sides. The king went to Pabur and at night time he occupied the village. Next morning he sat in Court and took all the ornaments and cattle away from the village, even the clothes of the village. As he favoured Bol, he never did anything there.[1]

Westermann, whose information is least reliable, states that: [114]

Murder cases were tried by a court of chiefs and the king. If a man was condemned, he was disgraced in many ways before the people. Sometimes he was led about the village with a cow-rope around his neck, and then executed by hanging. If a man was executed on account of a crime, his whole family and everything he possessed became the property of the king.[2]

and also that:

In the case of certain infractions of the law the convict became the slave of the king, and could no more return to his home. These slaves are known as *tyen orak* (' men of crime ') or *adwe* [' slaves ' of the Royal Household]. [567]

Apart from a description of a peace ceremony performed by the *reth* published by the Reverend D. S. Oyler, which will be discussed later, there are few references in published literature to homicide and the settlement of blood-feuds among the Shilluk. Naturally enough, administrative records contain frequent references to the subject because the Administration has been much concerned with the matter. Pumphrey, who was perhaps best qualified to weigh the evidence, unfortunately does not describe the procedures in detail nor record actual instances. 114

A full description of a peace ceremony between the warring settlements of Owaci and Thworo already mentioned was recorded in the Shilluk District files by Major G. W. Titherington in 1932. He writes as follows: 643 628

A peace ceremony was celebrated by the *reth* of the Shilluk between the sections of Owaci and Thworo on their traditional battle-ground on 1-3-32.

This feud is the most bitter and bloody of modern times and in about twenty years probably some fifty casualties have occurred in fighting and by retaliatory murder, and the numerous attempts to stop it have failed. Peace had been in the air since the Shilluk Chiefs' meeting in January, and, all preliminaries having been agreed to, the *reth* arrived to stay with the local Chief on February 29th. He saw all Chiefs and Headmen concerned on March 1st and 2nd. He then went to Thworo where the Court Chief brought a guard of about one hundred spears. These were in formation and fully armed, but in undress and without shields. The four Thworo companies took about an hour and a half to get assembled. There were about five hundred men on parade and (by then) all fully equipped, drums and kudu horns were in full blast and everyone in a much sweat and vast excitement. The *reth* addressed them briefly and they replied that they wanted peace. He got them on the move,

[1] Hofmayr, op. cit. [2] Westermann, *The Shilluk People*, 1912, p. 180.

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628 643 led by the guard, and then motored on to Owaci who were similarly started off, about eight hundred strong, also in four companies.

There was a large assembly uniting at the meeting place, with three bullocks and four sheep for sacrifice. These were provided by the *reth* and the two factions.

[634] Two neutral Chiefs had previously been told off to lead the factions to the meeting place which had been marked. This is important because experience has shown[1] that left to themselves the two factions will sit down about two hundred yards apart and then the memory of stolen cattle or a murdered brother will be too much for someone's self-control resulting in a flow of martial oratory. This will lead some young blood to dash forward and hurl spears or insults and there follows retaliation. If they can be got to move up close together without pause, it is obvious that the consequences of any hostilities will be so serious that anyone trying to start anything will instantly be suppressed by his wiser brethren in arms.

Both factions were finally got to sit down close up to the line and to put their shields on the ground as a sign of mutual confidence. The *reth* walked among them and briefly addressed them and they answered that they wanted peace. He was rather an impressive figure and seemed to have the situation under confident control. Some concerted hand-clapping was taken as a good sign by the public.

[782] The *reth*'s bullock was then led between one faction and the guard, thrown on its back, held by men of both factions, speared by men of both factions and had its throat cut.[2] Next, a procession of neutrals was formed who took hand-fulls of the stomach contents and marched round throwing it at the factions. The next item caused most interest among the public. Thworo got up, marched round the guard and sat down touching Owaci who had the good manners to remain seated. Owaci's bull and sheep were led up, but put aside to be sacrificed at the shrine of Queen Abujok in Thworo next day. Thworo's bull was then led up and killed just as the *reth*'s had been by persons with an active interest in the feud.

[787] Lesser folk killed the sheep, one of which got up and managed to stagger a few steps under a rain of spear thrusts. This was considered a bad omen and one by-stander recalled the abortive peace between Fzalo and Fanyidwai in 1926.[3]

[648] This cannot be quoted as evidence of the *reth*'s executive powers, for we know that he was accompanied by the District Commissioner on this occasion, but certain interesting facts emerge. In the first place, the attitude of opposition between the two groups is clearly stressed, though it is more than probable that at proceedings of this kind a display of hostile attitudes is demanded by convention. The author indicates that the *reth* busies himself with the actual organization of the ceremonies and certainly acts as arbitrator, visiting first one side and then the other. It is unfortunate that little mention is made of the ritual functions of the *reth*. In 1920 the Rev. D. S.

[119] Oyler described a similar peace ceremony in the settlements of Maimom, Fakoi, Fatworo, and Fzalo[4] and his account of the procedure does not greatly differ from that of Titherington. He implies throughout that the desire for peace came from the participants and there is no suggestion that peace was forced upon them, even though the *Mamur*[5] was present. 'The people of this District', he says 'were tired of con-

[1] Titherington makes no reference to instances from which such experience derived. It must be assumed that some peace ceremonies failed from the start.

[2] Shilluk say that each man concerned should stab the sacrificial ox, which is then split (*ngol*) and the two portions divided among the respective parties. This procedure is reminiscent of all ceremonies performed in Nilotic tribes for the restoration of peaceful relations.

[3] Unpublished District records by G. W. Titherington, at Malakal, dated 3.4.32.

[4] Oyler, the Rev. D. S. 'The Shilluk Peace Ceremony', *S.N.R.*, 1920.

[5] Sudanese (or more probably Egyptian) administrative officer.

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tinual guerrilla warfare, and some of them were anxious to have the trouble finally settled.' He adds, 'Each side was afraid to make the decision lest it appear weak'.

Oyler's account gives us a clearer picture of the ritual performed by the *reth* and also of his function in exhorting the people to make peace. There is nowhere any suggestion that he compels them to do so, he merely 'advises'. Much of this 'advice' is tainted with statements which reflect the *reth*'s official capacity as Government agent. 'The king made a talk in which he pointed out that the colour of the animal to be killed had bits of both red and black. The red was for the blood that would be shed, should someone break the covenant, and the black was for the evil of such a course. . . . "We, the black people unite with the red (white) people of the Government to reconcile you".' Though much of the metaphorical aspects of this speech may have derived from the Rev. D. S. Oyler himself, it is not, as a matter of fact, untypical of Shilluk speeches of this sort.[1] Later we hear that 'he (the *reth*) informed the people that the animal was a cow of Nyikang, descendant of a cow owned by Nyikang. The king added most seriously: "The flesh of this animal is my flesh, and its blood is the same as my blood. Great disaster will come on you, if you break the covenant, for you will be cursed by the blood."' Then, after considerable delay because no one was willing to take the responsibility of being first to spear the animal, men of both factions speared it to death and, as described also by Titherington, were pelted with the stomach contents.

One thing is striking. The orderly procedure described in these accounts bears little resemblance to the punitive expeditions carried out by the *reth* in order to suppress internal hostilities, and though this might be expected after thirty years of administration, it seems to me that the *reth*'s role as arbitrator is far more in accordance with his true functions in Shilluk society.

There are also references in District records to these punitive expeditions, but always without the evidence of actual instances. One hears of the 'custom of the *reth* of punishing a murderous or disobedient village by looting and destroying it. This he did either by sending a force of his own, if it was near Fashoda, or else, if it was a long way off, by sending orders to the Chief of the neighbouring village or section to do this. Such a force was apparently not resisted and there was no difficulty in finding it because there was sure to be a community with a feud against the guilty and also the *reth* only kept part of the loot. . . . This system seems to have survived the *Turkia* and *Mahdia*, possibly because there was *nothing incompatible in it with methods of those days*.'[2]

The author of this account might have added that much in the methods employed may even have derived from Turkish example. The Turks were at pains to use the *reth* as an administrative agent and doubtless encouraged such raids carried out in the name of justice and security. The author continues: 'However, these methods came to an abrupt end with the removal of *reth* Kur in 1903, the appointment by the Government of his aged successor *reth* Fadiet, and the rules laid down at the time.'

From scattered references of this nature we are not able to reach reliable conclusions concerning the *reth*'s executive authority in the past in connexion with homicide and blood-feuds, whether actual or theoretical. There is certainly a strong tradition

[1] Cf. speeches made at the installation of *reth* Anei wad Kur. Howell & Thomson, op. cit., p. 71.

[2] 'A note on Customary Law', dated June 1931 (unpublished). The italics are mine.

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among the Shilluk that he was empowered to suppress internal feuds, that he actually did so with the assistance of an army of neutrals, and that, though the punishments inflicted on the guilty sections of the community were severe and included seizure of property and the enslavement of the guilty parties, little resistance was shown. At the same time, there are few examples cited in Shilluk tradition which date back to days earlier than the first alien administration. Such methods resemble the methods employed by those who were used as agents in Turkish times to maintain some kind of order. They are also reminiscent of Arab procedures, and it must be remembered that the Shilluk were influenced by Arab contacts.[1] They are in keeping also with the methods employed during the *Mahdia*.

On the other hand, it is quite clear that the *reth* has always had recognized functions as an arbitrator in blood-feuds. These functions are both purely secular, in the attempt to reconcile warring factions, and ritual, in the removal of prohibitions raised in feuds.[2] It is more than probable that in early days the *reth* would take no action unless he was certain that the two parties wished for peace. In Titherington's account we hear that, 'The *reth* walked among them and briefly addressed them and they answered that they wanted peace. . . . The taboo on the families at feud eating together, is removed by the *reth*.'[3]

Hofmayr says: 'When the number of the dead and wounded on both sides is equal, they stop fighting. The King will hold court and punish the offender who is in the wrong.' The idea that feuds cease when the participants are tired of fighting and of a perpetual state of insecurity is stressed again and again in reports. It is at this point that the *reth*'s intervention is accepted, and it seems to me doubtful whether he would normally intervene in any other circumstances.

Indemnity for Homicide

The present recognized indemnity for wilful homicide among the Shilluk is ten head of cattle. There have been frequent attempts by the Administration during the course of the last thirty years to raise this number, as a deterrent, but these attempts do not appear to have been either effective or generally accepted by the tribe. The traditional number demanded is also in doubt. Thomson, in an unpublished report, says: 'In the past blood-money for a killing was ten head of cattle to the deceased's family and ten to the *reth*. Later it became ten to the deceased's family, five to the *reth* and five to the Government. It is now (since 1932) ten head of cattle to the family of the deceased only.' I have sometimes heard it said that in *reth* Fadiet's time (1903–17) it was only seven head,[4] but it was raised to twenty, of which the *reth* took half, by orders of *reth* Fafiti when he first succeeded to the throne. It is also said that in the old days a girl was sometimes handed over instead of cattle, and although intermarriage between people at feud is considered wrong unless the full peace ceremonies have been completed, this girl was taken in marriage by one of the kinsmen of the dead man. If, by reason of some kinship relationship with the deceased, she fell within the prohibited degrees of marriage, she would be accepted as a

[1] *Cf.* The Baggara *Khums*: خمس, whereby neutral tribal segments would band together to punish wrongdoers, seizing their possessions, which were handed over to the deceased's family.

[2] Such as the prohibition on eating together and on intermarriage.

[3] Titherington, unpublished records.

[4] Sometimes quoted as being current in *reth* Kur's time (deposed 1903) too.

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daughter, would marry out of the lineage, and her bridewealth would be used to marry a wife from elsewhere. I can quote no actual instances of this custom, but it is in keeping with Shilluk ideas, and I believe it to have been common in the past. The indemnity is known in Shilluk as *col dhano*, 'the replacement of a man'. Although the Shilluk do not have an institution comparable to the Nuer and Dinka custom of 'ghost-marriage',[1] they certainly consider that the continuity of the kinship group must be assured and the acceptance of an indemnity is primarily directed to this object. A wife married with 'blood-cattle' is called *nya wic dhano*, 'the girl in place of the man',[2] and although she is not married specifically 'to the name of the dead man', as would be the case among both Nuer and Dinka, the principles are the same. The primary intention in accepting such payments in cattle is therefore to marry a wife into the dead man's lineage, or to acquire a girl who will either be taken in marriage or received as a daughter from whom bridewealth may be expected. Since bridewealth among the Shilluk is more or less rigidly maintained at ten head of cattle, it is logical that the indemnity for homicide should also be ten.

Among many Nilotic peoples in the past there were different rates of compensation for the taking of human life according to the status of the person killed. Among the Shilluk a greater differentiation might be expected, but there is little evidence of this, though Shilluk themselves say that to kill a member of the royal clan would be a serious offence and in the past was likely to call forth a punitive expedition by the *reth*. It is significant that Hofmayr says: 'To wound a royal prince or princess, or a royal daughter or son of a prince, whether it happens accidentally or intentionally, demands a high penalty for the shedding of royal blood (*a wano*). In 1912 a boy accidentally injured a royal daughter with a spear and caused only a slight flesh wound. He had to pay six head of cattle (two or three to the King, one to the mother of the girl, and one to the Chief of the village).'

There is normally no distinction in the amount of compensation demanded for the death of a woman. A husband who kills his wife is not expected to pay compensation if he has completed the bridewealth payments. When a woman kills someone, her father or legal guardian is held responsible if she is unmarried; a husband is responsible for the actions of his wife.

As among other Nilotic peoples, when homicide is a joint action, the first man to cause injury to the deceased is held to be responsible for his death.

In the peacemaking negotiations described, the ritual acts and ceremonial procedures are reminiscent of those performed by the 'Leopard-Skin Chief' among the Nuer, and the 'Chief of the Spear' among many Dinka tribes. These similarities are seen in the public ceremonies rather than in the special ritual performed to relieve the killer of the spiritual contamination which is believed to follow an act of homicide; this is not surprising, since obviously the *reth* could not deal individually with every killer. Further, it is customary for these functionaries among both Nuer and Dinka to take a small proportion[3] of the 'blood-cattle' in return for their services;

[1] See Evans-Pritchard, *Kinship and Marriage among the Nuer*, pp. 109–12. Oxford, 1951.

[2] Mr. J. L. Baker tells me that children born in such circumstances are known as *okic* or *akic* (according to sex) which means literally 'father dead'.

[3] For example, out of a total varying between twenty and forty head of cattle, the Nuer *kwar kwac* takes the *yang kwini* in return for his services early on in the negotiations for peace, the *rwath rom* ('bull calf of blood') and *yang kwac* ('cow of the leopard-skin'), besides two oxen which he sacrifices at the ceremony. In some parts of Nuerland these might

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some of the beasts are sacrificed during the ceremonies and others are added to their personal herds. One must, therefore, beg the question whether those portions alleged to be the right of the *reth* were ritual fees of this nature rather than 'fines' as is so frequently stated. It is a question of interpretation, and I suggest that even though repressive action and the exaction of 'fines' may have occurred, with the backing of foreign Governments, during the latter half of the last century and the early years of the present Administration, the payments were ritual in origin and concerned the *reth*'s ritual function in society. The use of the word 'fine' appears to me to be inaccurate.

Ritual of Purification for Homicide

As among other Nilotic peoples, a Shilluk who has killed another must perform certain rites to cleanse him from impurity which might otherwise affect his kinsmen. This process involves, first, the letting of blood, which is carried out by a magical expert (*ajwogo*)[1] who makes a small incision on his right shoulder with a spear. This is known as *tai dhani*. Secondly, a small sacrifice is made (usually a sheep), the object of which is to remove the curse of the dead man's spirit. As among the Nuer and Dinka, the killer is not expected to eat or drink until this ritual has been performed.

Accidental Killing

Accidental killing (*agwen*) is apparently not regarded as a serious offence among the Shilluk, especially if the two parties are connected by kinship or by close association in one territory. Hofmayr says: 'Accidental killing requires only the sacrifice of an ox at a peace ceremony and no more.'[2] District records indicate that two head of cattle sometimes were paid. At the Shilluk Chiefs' Council in 1934 it is recorded that 'the Council do not know whether there is a definite law on this subject or not. The *reth* says that years ago it was two head of cattle, one to the relatives of the dead man, one to the *reth*. He himself suggests two head of cattle to go to the deceased's family. This is confirmed as law.' I do not think that any such fixed indemnity existed in the past, but that intention was recognized and accident accepted in mitigation of the offence. At any rate the indignation of the deceased's kinsmen would not be so acute, and they would be prepared to accept an indemnity less than that normally demanded for intentional homicide.

Bodily Injuries not causing Death

On the subject of bodily injuries less than death, the evidence is even less reliable than on homicide. It is evident that such injuries require the payment of compensation if retaliatory action is not to follow. At the same time it is perhaps surprising that among the Shilluk, unlike the Nuer and Dinka, there are no recognized injuries for which compensation is given on a definite scale. We hear that 'for injury' an immediate payment of one bull must be made as a guarantee of good faith. Subsequent settlement is made on a scale regulated by the severity of the ultimate damage and rising, in the case of blinding, to the same rate as for death. Apart from the problem of the *reth*'s intervention in matters of this sort, it may be assumed, in the absence of

amount to eight cattle out of a total of forty.

[1] *Ajwogo:* Magical expert or specialist. These persons are not comparable to the Nuer functionaries, such as the *kwar kwar*, but to the possessors of spirits (*gwan kwoth*). *Ajwogo* is a derivative of *Juok*, meaning God in Shilluk.

[2] Op. cit.

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further evidence, that such offences were treated as private delicts in the past, though nowadays, through the influence of the Government, penal sanctions may be applied.

Witchcraft

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The Dinka and Nuer tell us that witches and other anti-social persons were sometimes dispatched by their victims or their kinsmen with the tacit consent of the community. Acts of homicide against persons whose actions threatened the integrity of the community were either not subject to restitutory sanctions at all, or the compensation demanded by their kinsmen was on a much reduced scale.[1] A similar attitude towards witches is to be found among the Shilluk, but again without the support of actual examples.

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In the published literature there are references to persons described variously as witches, sorcerers, magicians, medicine-men, and possessors of the evil eye,[2] and their activities and methods are described, but there are few references to the way in which they were treated. The sanction applied to witchcraft is normally counter-magic consciously applied by the victim.

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Hofmayr speaks of 'the *jal yat*, the evil-doer, his aim in life is to do harm, both to life and to property, either by natural means or others,' and adds that 'the *jal yat* works in the dark, but if he is caught, he will be severely punished. Often he is handed over to the people who kill him.' Hofmayr also speaks of the 'poison mixer' (again *jal yat*) who 'is hardly ever discovered. If he is caught, the people will lynch him on the spot and his relations will have to leave the district.'[3] Another passage mentions that the compensation for killing a person possessing the evil eye is only four head of cattle instead of ten. These references, supported by what the Shilluk have told me, suggest an attitude similar to that found among the Nuer and Dinka.

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It might be expected that, if there were any greater development of concepts of public law, and if the *reth* performed formal judicial and executive functions, acts of this sort would be subject not to merely private retaliation with the consent of the community, but rather to repressive sanctions applied by the *reth* or his representatives. In fact there is no evidence of this. It may be noted in this connexion that there are instances recorded during the last thirty years of attempts to introduce alien cults which would clearly be subversive of the ritual status of the *reth* and, through him, of the religious foundations of Shilluk society. For this reason Shilluk who have openly practised the Dinka cult of Deng have been severely repressed.[4] There is good reason to believe that such activities would have been punished by death in the past and they are, by their very nature, public delicts amounting to acts of treason.

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Conclusions

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Much of the evidence so far quoted is unreliable, mainly because the authors have recorded impressions rather than facts. My own conversations with the Shilluk on the subject have been limited and perfunctory, and for this reason cannot provide

[1] For example, the Nuer *rudi* or Ghoul - see Howell and Lewis, 'Nuer Ghouls—a form of Witchcraft', *S.N.R.* xxviii, 1947.

[2] *ajwogo*, magician, *jal yat*, sorcerer, *yuub*, possessor of the evil eye. There are many references to the activities of such persons in Hofmayr, *Die Schilluk*. See also Oyler, D. S., 'The Evil Medicine Man', *S.N.R.*, 1920.

[3] Hofmayr, op. cit.

[4] See Willis, C. A., 'The Cult of Deng', *S.N.R.*, vol. xi, p. 193.

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a basis for definite conclusions. It is, however, probably safe to say that among the Shilluk homicide is a private delict requiring the restoration of equilibrium by the payment of compensation in cattle. The main object of such payments is to marry a wife into the kinship group of the deceased—rather than individually to the name of the deceased—and thus ensure its continuity and increase, which have been interrupted by the removal of one of its members. Retaliatory sanctions are also operative, in that the duty to take vengeance on the person of the killer or one of his kinsmen is recognized.[1] In principle, there are here no profound differences between the Shilluk and their Nuer and Dinka neighbours. The rate of compensation is governed by the relationship between the parties and thus the offence is subject to social range. Patricide and fratricide, regarded as the gravest possible offences against the integrity of the kinship group, are subject only to supernatural sanctions. These apply within the local lineage in lessening degree according to the relationship between the persons concerned, and the ritual expiation is known in Shilluk as '*cuila ji kipo rwot*'.

We cannot, however, entirely ignore the strong tradition which prevails among the Shilluk and the views of early writers, that the *reth*, as ultimate authority, had the recognized power to intervene, to enforce such payments and, moreover, to exact additional payments in person and kind amounting to fines which he seized for himself. If we are to believe these traditions, we must conclude that public action against warring factions, whose continued enmity was disturbing the peace of Shilluk society as a whole, was sometimes undertaken. This does not, in my opinion, alter the argument that individual acts of homicide were treated as private delicts involving primarily the restoration of equilibrium between the units of society concerned. If, however, the portions alleged to have been taken regularly by the Shilluk *reth* are regarded as 'fines' paid to the head of the State (though in my opinion this is a wrong interpretation), then homicide among the Shilluk appears to be in a transitional stage between a private and a public delict, and was so even prior to the introduction of penal sactions by the present Government.

[1] Pumphrey observes: 'It is interesting that where a compensatory payment for killing is due (in contrast to compensation for lesser wrongs) the net is cast wider and not only the lineage, but even members of other lineages of the same clan are expected to contribute.' Op. cit., p. 23.

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Résumé

LES LOIS SHILLUK CONCERNANT L'HOMICIDE ET LES FONCTIONS JURIDIQUES DU *RETH*

Après un récit sommaire de l'histoire du peuple Shilluk et des caractéristiques de leur société, l'auteur examine l'autorité et les fonctions administratives du roi (*reth*), et plus particulièrement ses fonctions juridiques concernant les vendettas et les cas d'homicide. Il suggère que les traditions des Shilluk et les récits des premiers explorateurs et anthropologues ont eu tendance à exagérer les pouvoirs du roi en le représentant comme l'autocrate ou même le souverain tout puissant d'une société hautement organisée. Pendant le régime turque, ainsi que sous l'administration actuelle, l'autorité du *reth* a été soutenue et, dans une certaine mesure, augmentée par un système de gouvernement indirect; mais l'auteur exprime l'opinion qu'avant l'intervention de ces autorités externes, les fonctions du *reth* étaient principalement, sinon entièrement, rituelles. Il paraît que le *reth* agissait comme médiateur dans les vendettas entre groupes, qui survenaient fréquemment et persistaient souvent pendant de longues années, mais il est douteux s'il possédait le pouvoir d'intervenir avant d'y être invité par les participants. L'auteur examine, comme exemple de procédures judiciaires, les lois concernant l'homicide, et exprime l'opinion que l'homicide était regardé traditionnellement comme un délit privé pour lequel une indemnité en bétail, d'après un barème déterminé, était demandée par la famille du défunt dans le but d'acquérir une épouse pour le groupe d'apparentés. Des bestiaux supplémentaires remis au *reth* constituaient une sorte de rétribution pour ses services de célébration des rites de réconciliation et purification, et non d'" amendes " dues au chef d'un état à titre de pénalité pour un délit public.